

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

**R.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Coppell, TX, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 15-1753  
Issued: April 3, 2017**

*Appearances:*

*Debra Hauser, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

On August 7, 2015<sup>2</sup> appellant, through counsel, filed a timely appeal from a February 9, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 15-1753.

The Board, having duly considered the matter, concludes that the case is not in posture for decision. In this regard, the Board finds that the factual record is incomplete and requires

---

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of OWCP's decision. See 20 C.F.R. § 501.3(f)(2). One hundred and eighty days from February 9, 2015 was August 8, 2015. As this fell on a Saturday, the appeal would have been due the following business day which was Monday, August 10, 2015. Since using August 18, 2015, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is August 7, 2015, which renders the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

further development by OWCP. It is well established that proceedings under the Federal Employees' Compensation Act<sup>3</sup> (FECA) are not adversarial in nature and that while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. OWCP has an obligation to see that justice is done.<sup>4</sup> In a case where it "proceeds to develop the evidence and to procure evidence, it must do so in a fair and impartial manner."<sup>5</sup> On remand, OWCP should obtain additional evidence from the employing establishment including a position description of the date-of-injury position and position descriptions of any light-duty positions offered appellant. It should also obtain from the employing establishment payroll, attendance, and disability payment records setting forth appellant's dates of work, disability payments, and status of employment with respect to the time period in question. OWCP should request that the employing establishment provide all evidence forming the basis for the April 2013 termination of employment as well as an explanation of the September 3, 2013 notification of personnel action (SF-50) which indicated that it was effective April 26, 2013 and that appellant had been separated in error. The type of information being sought is normally within the custody of the employing establishment and not readily available to appellant.

Section 501.2(c) of the Board's *Rules of Procedure*,<sup>6</sup> provides that the Board has jurisdiction "to consider and decide appeals from the final decision of OWCP in any case arising under [FECA]." Since the record as transmitted to the Board does not contain evidence necessary to determine appellant's work status during the period of total disability claimed, the Board is unable to properly consider and decide appellant's claim. The Board therefore finds that the February 9, 2015 decision must be set aside and the case remanded to OWCP for further development of the factual record. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision. Accordingly,

---

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

<sup>5</sup> *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

<sup>6</sup> 20 C.F.R. § 501.2(c).

**IT IS HEREBY ORDERED** that the February 9, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: April 3, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board